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For other definitions, see Words and Phrases, vol. 1, pp. 86-96; vol. 8, p. 7561; vol. 8, pp. 6957, 7815; vol. 5, p. 4413; vol. 8, p. 7718.]

**3. Equity (§ 410\*)—Report of Commissioner—Weight.**—The report of a commissioner in chancery is prima facie correct, and objections thereto must be made by exceptions, and, if excepted to, the court will examine the evidence to see whether it sustains the master's conclusions, but his conclusions on conflicting evidence will not be disturbed unless against clear weight of the evidence.

[Ed. Note.—For other cases, see Equity, Cent. Dig. §§ 905-919; Dec. Dig. § 410.\* 11 Va.-W. Va. Enc. Dig. 748; 14 Va.-W. Va. Enc. Dig. 888; 15 Va.-W. Va. Enc. Dig. 859.]

Appeal from Circuit Court of City of Norfolk.

Suit by the John Diebold & Sons Stone Company, Incorporated, against Lizzie M. Tatterson, as executrix, and others. There was a decree for defendants, and plaintiff appeals. Reversed.

*Jeffries, Wolcott, Wolcott & Lankford* and *John A. Baecher*, all of Norfolk, for appellants.

*Jno. B. Jenkins, Wilcox, Cooke & Willcox, E. R. F. Wells*, and *Jas. G. Martin*, all of Norfolk, for appellees.

HAWLING *v.* CHAPIN et al.

Jan. 15, 1914.

[80 S. E. 587.]

**1. Appeal and Error (§ 1042\*)—Review—Failure to Enter Order.**—That the trial court improperly refused to strike defendant's pleas, intending to strike them when the question was raised during the trial, did not cure the error in admitting them.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4110-4114; Dec. Dig. § 1042.\* 1 Va.-W. Va. Enc. Dig. 597; 14 Va.-W. Va. Enc. Dig. 95; 15 Va.-W. Va. Enc. Dig. 70.]

**2. Limitation of Actions (§ 39\*)—Actions for Nuisance.**—An action for damages for defendants' maintenance of cesspools on their land, which polluted plaintiff's well and rendered his property less valuable, may be brought at any time within five years, being governed by Code 1906, § 2927, providing that every personal action for which no limitation is otherwise fixed shall be brought within five years after accrual.

[Ed. Note.—For other cases, see Limitation of Actions, Cent. Dig. §§ 172, 190-211; Dec. Dig. § 39.\* 9 Va.-W. Va. Enc. Dig. 408.]

**3. Appeal and Error (§ 1042\*)—Review—Harmless Error.**—In an

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

action for damages for the pollution of plaintiff's well owing to defendants' maintenance of a cesspool upon their land, the erroneous refusal of the trial court to strike defendants' pleas, setting up the one and three year statute of limitations, must be considered prejudicial; there being nothing in the record affirmatively showing that plaintiff was not harmed.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4110-4114; Dec. Dig. § 1042.\* 1 Va.-W. Va. Enc. Dig. 597; 14 Va.-W. Va. Enc. Dig. 95; 15 Va.-W. Va. Enc. Dig. 70.]

Error to Circuit Court, Loudoun County.

Trespass on the case by Eugene Hawling against John D. Chapin and others. There was a judgment for defendants, and plaintiff brings error. Reversed and remanded.

*Richard H. Tebbs* and *Cecil Connor*, both of Leesburg, for plaintiff in error.

*E. E. Garrett*, of Leesburg, for defendants in error.

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PEEK *v.* CITY OF HAMPTON.

Jan. 15, 1914.

[80 S. E. 593.]

**1. Bridges (§ 1\*)—Authority to Construct.**—The expediency of building a bridge by a city under authority of the Legislature cannot be questioned in the courts.

[Ed. Note.—For other cases, see Bridges, Cent. Dig. § 1; Dec. Dig. § 1.\* 2 Va.-W. Va. Enc. Dig. 624; 14 Va.-W. Va. Enc. Dig. 176; 15 Va.-W. Va. Enc. Dig. 144.]

**2. Appeal and Error (§ 176\*)—Questions in Trial Court—Admissions.**—Where, in an action against a city for damages resulting from the construction of a bridge, counsel agreed that the bridge was constructed by the city "under legal authority," and the court instructed that the legal power of the city to build the bridge was not in issue, but that did not exonerate the city from paying damages caused by its construction, it cannot be contended on appeal that the bridge was built without legal authority.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 1066; Dec. Dig. § 176.\* 1 Va.-W. Va. Enc. Dig. 609; 14 Va.-W. Va. Enc. Dig. 99; 15 Va.-W. Va. Enc. Dig. 72.]

**3. Eminent Domain (§ 307\*)—Action for Damages—Instructions.**—In trespass on the case for damages for injury to plaintiff's riparian rights by the construction of a bridge by defendant city,

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.